

FEB 19 2013

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

RICHARD GLENN NEWMAN, JR.,)	Civil Action No. 7:13-cv-00015
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
GERALD A. MCPEAK, <u>et al.</u>,)	By: Hon. Michael F. Urbanski
Defendants.)	United States District Judge

Richard Glenn Newman, Jr., a Virginia inmate proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1343. Plaintiff names as defendants the New River Valley Regional Jail ("Jail") and Gerald A. McPeak, the Jail's Superintendent. Plaintiff alleges his civil rights were violated by not receiving dental floss. This matter is before the court for screening, pursuant to 28 U.S.C. § 1915A. After reviewing plaintiff's submissions, the court dismisses the Complaint without prejudice for failing to state a claim upon which relief may be granted.

The court must dismiss any action or claim filed by an inmate if the court determines that the action or claim is frivolous or fails to state a claim on which relief may be granted. See 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1); 42 U.S.C. § 1997e(c). The first standard includes claims based upon "an indisputably meritless legal theory," "claims of infringement of a legal interest which clearly does not exist," or claims where the "factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting a plaintiff's factual allegations as true. A complaint needs "a short and plain statement of the claim showing that the pleader is entitled to relief" and sufficient "[f]actual allegations . . . to raise a right to

relief above the speculative level” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). A plaintiff’s basis for relief “requires more than labels and conclusions” Id. Therefore, a plaintiff must “allege facts sufficient to state all the elements of [the] claim.”¹ Bass v. E.I. Dupont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003).

To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). However, the Jail is not a “person” for purposes of § 1983. See McCoy v. Chesapeake Corr. Ctr., 788 F. Supp. 890 (E.D. Va. Apr. 13, 1992) (reasoning jails are not appropriate defendants to a § 1983 action). Furthermore, plaintiff fails to allege any facts against McPeak. Plaintiff sole allegation is that “defendant refuses to give plaintiff dental floss, which caused cavities, pain, a lost tooth, and tooth decay.” Plaintiff does not provide evidence of McPeak’s involvement beyond his mere conclusion, and plaintiff’s grievances do not reveal McPeak’s personal act or omission that could constitute deliberate indifference to a serious medical need. Plaintiff cannot proceed against the Jail’s Superintendent in a § 1983 action via respondeat superior. See, e.g., Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 663 n.7 (1978); Estelle v. Gamble, 429 U.S. 97, 104 (1976). Moreover, plaintiff fails to describe how an inability to possess dental floss is not

¹ Determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). Thus, a court screening a complaint under Rule 12(b)(6) can identify pleadings that are not entitled to an assumption of truth because they consist of no more than labels and conclusions. Id. Although the court liberally construes pro se complaints, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), the court does not act as an inmate’s advocate, sua sponte developing statutory and constitutional claims not clearly raised in a complaint. See Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). See also Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) (recognizing that a district court is not expected to assume the role of advocate for a pro se plaintiff).

reasonably related to legitimate penological interests or constitutes a cruel and unusual living condition. See, e.g., Turner v. Safley, 482 U.S. 78, 107 (1987); Rhodes v. Chapman, 452 U.S. 337 (1981). See, e.g., Rhodes v. Chapman, 452 U.S. 337 (1981). Accordingly, the court dismisses the Complaint for failing to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915A(b)(1).

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to plaintiff.

ENTER: This 15th day of February, 2012.

/s/ Michael F. Urbanski
United States District Judge